TRIBUTE TO CONGRESSMAN DICK NICHOLS

Mr. MORAN. Mr. President, last month I was at the World War II Memorial greeting a number of Kansans who had arrived on an Honor Flight, and I certainly want to pay tribute to each of our service men and women and veterans. What a great experience it was on a beautiful day at the memorial. One of those veterans is someone I wish to talk about this evening to my colleagues here in the Senate.

Getting off the bus that day was my friend and a former Member of the U.S. House of Representatives for the Fifth Congressional District of Kansas, Dick Nichols. There are many things I admire about Kansans. Folks from my home State always look out for others. They commit their lives to helping and improving the lives of their communities, our State, and our Nation in order to make certain there is an even better opportunity for the next generation. Congressman Nichols is certainly one of those individuals. I wish to pay my regards to him today.

Dick was born in Kansas, raised in Fort Scott, and served during World War II as an ensign in the U.S. Navy. After serving our Nation with great integrity and humility, he pursued and achieved a bachelor's degree in science from Kansas State University in 1951. Congressman Nichols is a supporter of education but particularly a supporter of education that comes from Kansas State University. He is a Wildcat through and through.

Dick worked in a number of roles related to agriculture and banking in both the Topeka and Hutchinson communities in our State before he moved to McPherson—his home now. In McPherson, he began his career as a longtime community banker at the Home State Bank. He became president of that bank in 1969, and in 1986 he was elected to serve as president of the Kansas Bankers Association.

That same year Dick got some national notoriety: He was stabbed on the Staten Island Ferry by a homeless refugee from Cuba while touring the Statue of Liberty. While recuperating in the hospital, he was visited by then-New York Mayor Ed Koch, who apologized on behalf of the city of New York for the event. He was also invited to the Johnny Carson show to tell of his experiences in New York City. But even during that particular event, what he said on the talk show and what he told Mayor Koch was that he always looked for the best in every person and in every situation.

Dick continued as an active banker and served as the president and chairman of the board of his bank until he was elected to the U.S. Congress in 1990. Due to reapportionment in our State following the 1990 census, his district, the Fifth District, was eliminated and we went from five congressional districts to four, and Dick returned to the Home State Bank as chairman of its board. But whether he was a Congressman representing the Fifth District, a community banker in his hometown, or an ensign in the U.S. Navy, Dick always put service to others above self-interest.

Prior to his election to office in Congress, he was active in Kansas politics and particularly Republican politics. In my first campaign in 1996 for the U.S. House of Representatives, it was an honor for me to have him agree to serve as my campaign's honorary chairman.

In addition to his political involvement, Dick was also engaged in so many other things, many of them related to the community he cares so much about, McPherson, KS, including the chamber of commerce and the Rotary Club. He became the commanding general of the Kansas Cavalry, which is a group of business men and women from across our State who band together to recruit and encourage new businesses to come to our State, and he continued to serve other service men and women and veterans through his membership and participation in the American Legion and VFW.

Dick has often been quoted as saying:

> Much of life is in our mental attitude. If you think great things might happen, they do. If you question them ever happening, they won't.

I agree with that sentiment, and I have seen Dick Nichols live that in his life. Because of his attitude and character, many—including me—were inspired not only to get to know him but then to try to model their public service after his.

In McPherson, there are few people more loved and respected than Dick Nichols. It is a privilege for me to be able to call him a friend and mentor. When I initially ran for Congress and needed advice about his community and his county, he was the first person I reached out to. I always remember, as I was campaigning for the very first time for office in Congress, I had people tell me: If you are a friend of Dick Nichols', you are a friend of mine. And it is an opportunity we all ought to take to remember that how we conduct ourselves influence and affect so many others.

While I know that what happens here in the Senate and what happens in Washington, DC, has huge consequences and effect upon Kansans and Americans—and, in fact, people around the globe—I continue to believe that we change the world one person at a time, and it happens in communities across my State and across the country. Dick Nichols represents the kind of person who changes lives—in fact, changes the life of every person he meets.

So today, having seen Dick Nichols just a few weeks ago at the World War II Memorial, built in his and other World War II veterans' honor, I express my gratitude to Congressman Nichols for his service to his community, to our State of Kansas, and to our Nation. And I use this opportunity to remind myself about the true nature of public service, about caring for other people. I wish Dick and his wife Linda and their families all the very best.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CARDIN. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF ROBERT LEON WILKINS TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the nomination of Robert Leon Wilkins to be United States Circuit Judge.

The assistant legislative clerk read the nomination of Robert Leon Wilkins, of the District of Columbia, to be United States Circuit Judge for the District Of Columbia Circuit.

The PRESIDING OFFICER. Under the previous order, the time until 5:30 p.m. will be equally divided and controlled in the usual form.

The Senator from Maryland.

Mr. CARDIN. Mr. President, I rise today in strong support of the nomination of Judge Robert L. Wilkins to be a circuit judge for the United States Court of Appeals for the District of Columbia Circuit. I was pleased to introduce Judge Wilkins to the Judiciary Committee in September, and the committee favorably reported his nomination in October.

Judge Wilkins currently serves as Federal District Judge for the U.S. District Court for the District of Columbia, and was unanimously confirmed by the Senate for this position in 2010. I urge the Senate to invoke cloture to allow an up-or-down vote on this extremely qualified nominee.

Judge Wilkins is a native of Muncie, IN. He obtained his B.S. cum laude in chemical engineering from Rose-Hulman Institute of Technology, and his J.D. from Harvard Law School.

Following graduation, Judge Wilkins clerked for the Honorable Earl B. Gilliam of the U.S. District Court for the Southern District of California. He later served as a staff attorney and as head of Special Litigation for the Public Defender Service for the District of Columbia. He then practiced as a partner with Venable LLP, specializing in white collar defense, intellectual property, and complex civil litigation, before taking the bench as a judge.

Besides Wilkins' professional accomplishments as an attorney, he also played a leading role as a plaintiff in a landmark civil rights case in Maryland involving racial profiling. During his tenure with the Public Defender Service and in private practice, Judge Wilkins served as the lead plaintiff in Wilkins, et al. v. State of Maryland, a civil rights lawsuit against the Maryland State Police for a traffic stop they conducted of Judge Wilkins and his family.

In 1992, Judge Wilkins attended his grandfather's funeral in Chicago, and then began an all-night road trip home with three family members. Judge Wilkins was due back in Washington, DC that coming morning for a court appearance as a public defender. A Maryland State Police trooper pulled over their car. The police detained the family and deployed a drug-sniffing dog to check the car, after Judge Wilkins declined to consent to a search of the car, stating there was no reasonable suspicion. The family stood in the rain during the search, which did not undercover any contraband.

It is hard to describe the frustration and pain you feel when people pressure you to be guilty for no good reason, and you know that you are innocent . . . [W]e fit the profile to a tee. We were traveling on I-68, early in the morning, in a Virginia rental car. And, my cousin and I, the front seat passengers, were young black males. The only problem was that we were not dangerous, armed drug traffickers. It should not be suspicious to travel on the highway early in the morning in a Virginia rental car. And it should not be suspicious to be black.

After the traffic stop, Judge Wilkins began reviewing Maryland State Police data, and noticed that while a majority of those drivers searched on 1–95 were black, blacks made up only a minority of drivers traveling there.

Judge Wilkins filed a civil rights lawsuit, which resulted in two landmark settlements that were the first to require systematic compilation and publication by a police agency of data for all highway drug and weapons searches, including data regarding the race of the motorist involved, the justification for the search and the outcome of the search. The settlements also required the State police to hire an independent consultant, install video cameras in their vehicles, conduct internal investigations of all citizen complaints of racial profiling, and provide the Maryland NAACP with quarterly reports containing detailed information on the number, nature, location, and disposition of racial profiling complaints.

These settlements inspired a June 1999 executive order by President Clinton, Congressional hearings and legislation that has been enacted in over half of the 50 States.

It was a landmark case. It pointed out the right way in which we should conduct oversight and the right way to end racial profiling. Judge Wilkins took the leadership and did something that many of us would have had a hard time doing, putting himself forward in order to do what was right.

As my colleagues know, I have introduced S. 1038, the End Racial Profiling Act—ERPA—which would codify many of the practices now used by the Maryland State Police to root out the use of racial profiling by law enforcement. The Judiciary Committee held a hearing on ending the use of racial profiling last year, and I am hopeful that with the broader discussion on racial profiling generated by the tragic Trayvon Martin case that we can come together and move forward on this legislation.

Judge Wilkins played a key role in the passage of the federal statute establishing the National Museum of African American History and Culture Plan for Action Presidential Commission, and he served as the Chairman of the Site and Building Committee of that Presidential Commission. The work of the Presidential Commission led to the passage of Public Law No. 108–184, which authorized the creation of the National Museum of African American History and Culture. This museum will be the newest addition to the Smithsonian, and it is scheduled to open in 2015 between the National Museum of American History and the Washington Monument on the National Mall.

Judge Wilkins continues his pro bono work to this day. He currently serves as the Court liaison to the Standing Committee on Pro Bono Legal Services of the Judicial Conference of the DC Circuit. He is committed to public service and equal justice under the law.

As a U.S. district judge for the District of Columbia since 2011, Judge Wilkins has presided over hundreds of civil and criminal cases, including both jury and bench trials. Judge Wilkins already sits on a Federal bench which hears an unusual number of cases of national importance to the Federal Government, including complex election law, voting rights, environmental, securities, and administrative law cases. Indeed, Judge Wilkins has been nominated for the appellate court that would directly hear appeals from the court on which he currently sits. He understands the responsibilities of the court that he has been nominated to by President Obama.

The American Bar Association gave Judge Wilkins a rating of unanimously well qualified to serve as a Federal appellate judge, which is the highest possible rating from the nonpartisan peer review.

The U.S. Court of Appeals for the District of Columbia Circuit is also referred to as the Nation's second-highest court. The Supreme Court only accepts a handful of cases each year, so the DC Circuit often has the last word and proclaims the final law of the land in a range of critical areas of the law. Only 8 of the 11 seats of the court authorized by the Congress are filled, resulting in a higher than 25-percent vacancy rate on this critical court.

This court handles unusually complex cases in the area of administrative law, including revealing decisions and rulemaking of many Federal agencies in policy areas such as environmental, labor, and financial regulations. Nationally, only about 15 percent of the appeals are administrative in nature. In the DC Circuit, that figure is 43 percent. They have a much larger caseload of complex cases. The court also hears a variety of sensitive terrorism cases involving complicated issues such as enemy combatants and detention policies.

I have a quote from former Chief Judge Henry Edwards who said:

[R]eview of large, multiparty, difficult administrative appeals is the staple of judicial work in the DC Circuit. This alone distinguishes the work of the DC Circuit from the work of other circuits. It also explains why it is impossible to compare the work of the DC Circuit with other circuits by simply referring to raw data on case filings.

Chief Justice Roberts noted that ''about two-thirds of the cases before the DC Circuit involved the Federal Government in some civil capacity, while that figure is less than twenty-five percent nationwide.'' He also described the ''D.C. Circuit's unique character, as a court with special responsibility to review legal challenges to the conduct of the national government.''

We have a person who is imminently qualified for this position in Judge Wilkins. We have a need to fill these vacancies. The Senate should carry out its responsibility and conduct an up-or-down vote on Judge Wilkins' nomination. We are going to have a chance to do that in a few moments.

Let me remind my colleagues that the Senate unanimously confirmed Judge Wilkins in 2010 for his current position, and he has a distinguished lifelong record of public service.

I ask the Senate and my colleagues to vote so we can move forward and get an up-or-down vote on this imminently qualified judge, and I hope my colleagues will support his confirmation.

Mr. HATCH. The Senate today takes yet another unnecessary cloture vote on a nomination to the U.S. Court of Appeals for the DC Circuit, a court that needs no more judges. Applying the same standards that Democrats used to oppose Republican nominees to this court shows without a doubt that it needs no more judges today.

In July 2006, Judiciary Committee Democrats—including four still serving on the committee today—wrote chairman Arlen Specter explaining two reasons for opposing more DC Circuit appointments. The caseload of the court had declined, Democrats wrote, and more pressing ''judicial emergency'' vacancies had not been filled. Today, as we also debate nominees to the DC Circuit, Democrats will not only mention, let alone apply, the criteria they used in the past. But if we are going to have more than a totally political, completely partisan judicial confirmation process, I believe we should do just that.

In 2006, Democrats opposed more DC Circuit appointments because written

decisions per active judge had declined by 17 percent. Since 2006, written decisions per active judge have declined by an even greater 27 percent. In 2006, Democrats opposed more DC Circuit appointments because total appeals had declined by 10 percent. Since 2006, total appeals have declined by an even greater 18 percent. The DC Circuit's caseload not only continues to decline, but is declining faster than before.

In 2006, Democrats opposed more DC Circuit appointments because there were 20 judicial emergency vacancies and there were nominees for only 60 percent of them. Since 2006, judicial emergency vacancies have nearly doubled and the percentage of those vacancies with nominees has declined to less than 50 percent.

These are not my criteria. I did not pull these criteria out of the air this morning because they helped the political spin surrounding this cloture vote. After all, it takes only an agenda and a calculator to create a politically useful statistic. No, these are the very same criteria that Democrats used to oppose Republican nominees to this very same court. No Democrat has yet admitted that they were wrong to use these criteria in 2006 or explained why we should use different criteria today simply because the other political party controls the White House.

Since these facts are so uncomfortable, Democrats simply ignore them and try a new tactic, claiming that the DC Circuit's caseload is at least not the lowest in the country. I really wish the truth mattered more around here, especially when it is so easy to identify. The Administrative Office of the U.S. Courts ranks the 12 circuits of the U.S. Court of Appeals on different measures of their caseload and have posted on its website the rankings for the past 17 years. Without exception, the DC Circuit has ranked last, 12th out of 12 circuits, in both appeals being filed and appeals being terminated.

Some, including the Judiciary Committee chairman just last week, claim that the DC Circuit is busier than the Tenth Circuit, which includes my State of Utah. I have no idea how that is relevant to whether the DC Circuit needs more judges today. But even if that made sense, the claim is simply not true. The only caseload measure he now mentions is ''pending cases,'' which is least relevant because it is a snapshot rather than a measure of the flow of cases through the court. But here's what a brief look at the Administrative Office's database quickly shows. This year is the only year in nearly two decades when the Tenth Circuit ever had more pending cases than the DC Circuit.

The Tenth and DC Circuits have been the same size for many years, and since 2008 the DC Circuit has had one fewer authorized judgeship. This year, the Tenth Circuit had 87 percent more new appeals, 150 percent more written decisions per active judge, and 220 percent more appeals terminated on the merits. Rather than using an irrelevant criterion from a single year, as Democrats do, I looked at these relevant criteria over the last 20 years. The Tenth Circuit has always had a higher caseload than the DC Circuit and, if anything, the gulf between them has increased over time.

Why are my Democratic colleagues trying so hard to ignore or distort the cold, hard facts? What is so crucial about appointing these particular nominees to this particular court at this particular time? The most obvious reason is also the most political. This court has jurisdiction over actions of the executive branch agencies that President Obama needs to pursue his political agenda. His go-it-alone strategy increasingly avoids Congress, the only branch directly elected by and representing the American people. He appears to think that the three branches are interchangeable, that the political ends justify the political means.

The DC Circuit is evenly balanced today, with four Republican and four Democratic appointees. So President Obama sees this as his chance to stack the DC Circuit with judges he believes will approve his agenda.

If we still believe in an independent judiciary, if we want to preserve at least a little integrity and not lose all confidence of the American people in the confirmation process, then we should stop this partisan gambit. We should do what Democrats in 2006 did. We should use meaningful, objective criteria to conclude that the DC Circuit needs no more judges today and instead focus on confirming qualified nominees to courts that need them.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I listened to the words of my good friend from Maryland. He is absolutely right in what he said. It is a strange time. I have been here almost four decades, and I have experienced some dramatic changes in the Senate majorities and leadership styles going back and forth between both parties. But nothing at all has compared to the change that has occurred in the last 5 years.

Since President Obama was sworn in as President of the United States, what has occurred here is something I have never seen with any other President, and I have been here since the time of President Ford. Senate Republicans have made it their priority to obstruct at every turn the consideration of nominations that he has put forward. The Republican leader has said that his main goal was to have the President fail. Confirmation votes that regularly occurred by consent, now require a lengthy cloture process. Bipartisan and home state support for a nominee no longer ensures a timely confirmation.

Make no mistake, through this obstruction, Senate Republicans have crossed the line from use of the Senate rules to abuse of the Senate rules. It is the same kind of abuse that shut down our Federal Government recently and cost the taxpayers billions of dollars. One of the things that concerns me, as chairman of the Senate Judiciary Committee, is what it is doing to undermine, and eventually destroy, both the integrity and independence of our Federal judiciary.

One of the great glories of our country's three-part government is the independence of the Federal Judiciary. But, over the last 5 years, Senate Republicans have dragged it into politics. This severely impacts the ability of our Federal justice system to serve the interests of the American people.

If you are a litigant and need the protection of our Federal courts, you do not care whether a judge is a Republican or Democrat. You do not care whether they were nominated by a Republican or a Democratic President. All you expect—whether you are a plaintiff or defendant, State or respondent—is to be able to go into that courthouse and be treated fairly. But, if you go to that courthouse now, there is nobody there due to the 93 vacancies caused by the stonewalling on the other side of the aisle.

The same Republicans who are stonewalling now once insisted that filibustering judicial nominees was unconstitutional. The Constitution has not changed but when a Democrat was elected to the White House, they reversed course and filibustered this President's very first judicial nominee. Can you imagine? Within a very short time after the President was sworn in, the very first person was filibustered. That was the precedent they started.

Incidentally, that judicial nominee had the strong support of the most senior Republican then serving in the Senate. The most senior Republican Senator supported that nomination, but his leadership said: No, we have to filibuster and block the nomination because, after all, it was President Obama's nomination, not President Bush's nomination.

This is the pattern Senate Republicans continued to follow, filibustering 34 of President Obama's judicial nominees. This is nearly twice as many nominees than required cloture during President Bush's two terms. Almost all of these nominees were, by any standard, noncontroversial, but it took a great deal of effort by the Senate Judiciary Committee members and by Majority Leader REID to get to a simple up or down vote on those confirmations. Most of these nominees were supported by well-known names in the law, both Republicans and Democrats, but we still had to fight and get cloture to get them through.

Most recently, Senate Republicans have decided to filibuster well-qualified nominee after well-qualified nominee for the United States Court of Appeals for the DC Circuit. This court has three vacant seats.

During the Bush Administration, the Senate confirmed President Bush's nominees to the 9th, 10th, and 11th

seats. Then when there was again a vacancy in the 10th seat, and the Senate confirmed President Bush's second nominee for the 10th seat. But, now, when a new President has been elected—and I might say reelected by a solid majority—the Senate Republicans say: Oh, no, wait a minute. We needed those judges when there was a Republican President. We don't need them now that there is a Democrat President. The Senate Republican blockade of DC Circuit nominees is at an unprecedented level of obstruction. In my four decades here, I have never seen anything like what the Senate Republicans are doing—by either party. As Maine's former senior Senator Olympia Snowe recently said, ''When you have these back-to-back rejections of nominees, at some point it may be trying to reverse the results of the election.''

I fear that the obstruction will continue tonight, when we will try to end the filibuster against Judge Robert Wilkins. Judge Wilkins was unanimously confirmed to the U.S. District Court for the District of Columbia less than three years ago. He has presided over hundreds of cases and issued significant decisions in various areas of the law, including in the fields of administrative and constitutional law. Prior to serving on the bench, he was a partner for nearly 10 years in private practice and served more than 10 years as a public defender in the District of Columbia.

This is a man who under past Presidents and in past Senates would probably be confirmed by a voice vote after dozens of Senators of both parties stood on the floor to praise him. The difference today is that Judge Wilkins was nominated by President Obama, and suddenly Republican Senators are trying to block him.

During his time at the Public Defender Service, Judge Wilkins served as the lead plaintiff in a racial profiling case, which arose out of an incident in which he and three family members were stopped and detained while returning from a funeral in Chicago. This lawsuit led to landmark settlements that required systematic statewide compilation and publication of highway traffic stop and search data by race.

These settlements inspired an Executive order by President Clinton, legislation in the House and Senate, and legislation in at least 28 States prohibiting racial profiling or requiring data collection. It was a landmark case. The distinguished Presiding Officer and I come from States where we hope we do not have racial profiling. But, many Senators here know there are cases of racial profiling. I am aware of that happening even to members of my own family. I believe this practice should be stopped.

Despite the progress made in the past several decades, the struggle to diversify our Federal bench continues. If confirmed, Judge Wilkins would be only the sixth African American to have ever served on what is often considered the second most powerful court in our country, the DC Circuit.

Judge Wilkins has earned the ABA's highest possible rating of unanimously well qualified. Most attorneys nominated to the federal courts by Republicans or Democrats wish they had Judge Wilkins' professional experience and qualifications. Judge Wilkins also has the support of the National Bar Association, the nation's largest professional association of African-American lawyers and judges, as well as several other prominent legal organizations. I ask unanimous consent to have printed in the RECORD a list of letters in support of Judge Wilkins.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

LETTERS IN SUPPORT OF THE NOMINATION OF JUDGE ROBERT WILKINS

July 31, 2013—Diverse group of 97 organizations in support of Judge Wilkins, and the other two D.C. Circuit nominees, Patricia Millett and Nina Pillard. The organizations include National Bar Association, National Conference of Women's Bar Associations, Hispanic National Bar Association, American Association for Justice, National Association of Consumer Advocates, NAACP, and National Employment Lawyers Association.

August 28, 2013—Joseph C. Akers, Jr., Interim Executive Director, on behalf of National Organization of Black Law Enforcement Executives (NOBLE)

September 10, 2013—Benjamin F. Wilson, Managing Principal, Beveridge & Diamond, P.C. and John E. Page, SVP, Chief Legal Officer, Golden State Foods Corp. and Immediate Past President, National Bar Association on behalf of an ''ad hoc group of African American AmLaw 100 Managing Partners and Fortune 1000 General Counsel''

September 10, 2013—Nancy Duff Campbell and Marcia D. Greenberger, co-Presidents, on behalf of the National Women's Law Center

September 10, 2013—Doreen Hartwell, President, Las Vegas Chapter of the National Bar Association

September 11, 2013—The National Bar Association testimony in support.

September 18, 2013—William Martin, Washington Bar Association

September 27, 2013—Douglas Kendall, President, and Judith Schaeffer, Vice President, Constitutional Accountability Center

October 1, 2013—National Bar Association

October 1, 2013—Michael Madigan, Orrick, Herrington & Sutcliffe LLP

September 10, 2013 and October 2, 2013—Wade Henderson, President & CEO and Nancy Zirkin, Executive Vice President on behalf of The Leadership Conference on Civil and Human Rights

Mr. LEAHY. Republicans said the DC Circuit should be operating at full strength when President Bush held office. What is the difference between President Obama and President Bush's nominees? If it made sense to be operating at full strength with a Republican President, shouldn't it be operating at full strength under a Democratic President?

The Senate should consider Judge Wilkins based on his qualifications, and not hide behind some pretextual argument that most Americans can see through. As today's Washington Post editorial states, ''It's transparently self-serving of GOP lawmakers to oppose D.C. Circuit nominees only when it's a Democrat's turn to pick them.'' I as unanimous consent to have this editorial printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Nov. 17, 2013]

JUDICIAL NOMINEES FACE UNFAIR HURDLES IN THE SENATE

(By the Editorial Board)

Senate Republicans on Monday are likely to take a vote that is unfair, unwise and bad for the functioning of the government. Again.

For the third time in three weeks, the Senate will consider a presidential nominee to the powerful U.S. Court of Appeals for the District of Columbia Circuit. The first two nominees, Patricia Millett and Cornelia Pillard, failed to attract the 60 votes necessary to clear GOP filibusters. There's little reason to think that dynamic will change for the third, Judge Robert Wilkins.

Senate Republicans are not assessing these nominees on their merits, as each deserves. Rather, Republicans have made them victims of a toxic and unresolvable ''debate'' about the proper size of the D.C. Circuit. Republicans accuse President Obama of attempting to tilt its ideological balance, which, of course, he is. And they argue that the court isn't busy enough to require its vacant seats to be filled. Democrats insist the court still needs more active judges, and they point out that Republicans attempted to fill the court during the George W. Bush years, when the caseload wasn't much different.

But the question of whether the D.C. Circuit needs all 11 of its judicial slots doesn't need to be resolved to offer the president's legitimate nominees a fair up-or-down vote, and Republicans are wrong to use that as a pretext to block them. It's transparently self-serving of GOP lawmakers to oppose D.C. Circuit nominees only when it's a Democrat's turn to pick them. If Republicans truly are concerned that the court is too large, they should offer a plan to reduce its size—in future presidencies. That would separate raw partisan motivation from authentic concern about the state of the court system, and it's the only sensible way to make changes to its size amid sharp partisan contention. In the meantime, Republicans should give the president's legitimate, well-qualified nominees a fair hearing, instead of degrading further the already-broken process of staffing the government and the courts.

If the ''debate'' about the D.C. Circuit's size should doesn't end that way, Democrats might end it in another. Some of them would like to unblock the road for the president's nominees by forcing rules changes that would limit the filibuster. Following the rejection of the two women and Mr. Wilkins, who is African American, even some fairly even-keeled senators might be inclined to agree. That's a perilous path for the chamber that both sides probably would regret taking.

Instead, adults in the GOP should finally get together with Democrats and hammer out an understanding—the way previous judicial nomination crises have been resolved.

Mr. LEAHY. The halls are full of people talking about whether we are going to have a change in the cloture rule. I hope it does not come to that. But, make no mistake: the reason there is momentum toward considering a change in our rules is this kind of pettifoggery, delay for the sake of delay,

and treating this President differently from past Presidents.

If the Republican caucus continues to abuse the filibuster rules and obstruct these fine nominees without justification, then I believe this body must consider anew whether a rules change should be in order. As I stated above, that is not a change that I want to see happen but if Republican Senators are going to hold nominations hostage without consideration of their individual merit, drastic measures may be warranted.

Earlier this year, nearly every single Senate Democrat pushed the Majority Leader for a rules change in the face of Republican obstruction. I was one of the few members of the majority who voiced concern about changing the Senate rules. I believe that if Republicans filibuster yet another well-qualified nominee to this court tonight, it will be a tipping point. Senate Republicans have blocked three well-qualified women in a row from receiving a confirmation vote and now they are on the brink of filibustering the next nominee, Judge Robert Wilkins. I fear that after tonight the talk about changing the cloture rules for judicial nominations will no longer be just talk. There will be action. We cannot allow this unprecedented, wholesale obstruction to continue without undermining the Senate's role provided in the Constitution and without harming our independent Federal judiciary.

I yield the floor.

CLOTURE MOTION

The PRESIDING OFFICER. All time has expired.

Under the previous order and pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the nomination of Robert Leon Wilkins, of the District of Columbia, to be United States Circuit Judge for the District of Columbia Circuit.

Harry Reid, Patrick J. Leahy, Tom Udall, Mark Begich, Brian Schatz, Al Franken, Barbara Boxer, Richard J. Durbin, Christopher A. Coons, Tammy Baldwin, Debbie Stabenow, Benjamin L. Cardin, Sheldon Whitehouse, Patty Murray, Barbara A. Mikulski, Kirsten E. Gillibrand, Tom Harkin.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of Robert Leon Wilkins, of the District of Columbia, to be United States Circuit Judge for the District of Columbia Circuit, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. HATCH (when his name was called). ''Present.''

Mr. DURBIN. I announce that the Senator from Alaska (Mr. BEGICH), the Senator from Louisiana (Ms. LANDRIEU), and the Senator from Virginia (Mr. WARNER), are necessarily absent.

Mr. CORNYN. The following Senators are necessarily absent: the Senator from Missouri (Mr. BLUNT), the Senator from South Carolina (Mr. GRAHAM), the Senator from Georgia (Mr. ISAKSON), the Senator from Florida (Mr. RUBIO), and the Senator from Louisiana (Mr. VITTER).

The yeas and nays resulted—yeas 53, nays 38, as follows:

[Rollcall Vote No. 235 Ex.]

YEAS—53

Baldwin	Hagan	Murphy
Baucus	Harkin	Murray
Bennet	Heinrich	Nelson
Blumenthal	Heitkamp	Pryor
Booker	Hirono	Reed
Boxer	Johnson (SD)	Rockefeller
Brown	Kaine	Sanders
Cantwell	King	Schatz
Cardin	Klobuchar	Schumer
Carper	Leahy	Shaheen
Casey	Levin	Stabenow
Collins	Manchin	Tester
Coons	Markey	Udall (CO)
Donnelly	McCaskill	Udall (NM)
Durbin	Menendez	Warren
Feinstein	Merkley	Whitehouse
Franken	Mikulski	Wyden
Gillibrand	Murkowski	

NAYS—38

Alexander	Enzi	Moran
Ayotte	Fischer	Paul
Barrasso	Flake	Portman
Boozman	Grassley	Reid
Burr	Heller	Risch
Chambliss	Hoeven	Roberts
Coats	Inhofe	Scott
Coburn	Johanns	Sessions
Cochran	Johnson (WI)	Shelby
Corker	Kirk	Thune
Cornyn	Lee	Toomey
Crapo	McCain	Wicker
Cruz	McConnell	

ANSWERED ''PRESENT'' —1

Hatch

NOT VOTING—8

Begich	Isakson	Vitter
Blunt	Landrieu	Warner
Graham	Rubio	

The PRESIDING OFFICER. On this vote, the yeas are 53, the nays are 38. One Senator responded ''Present.'' Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The majority leader.

Mr. REID. Mr. President, I enter a motion to reconsider the vote by which cloture was not invoked on the Wilkins nomination.

The PRESIDING OFFICER. The motion is entered.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2014—MOTION TO PROCEED—Continued

CLOTURE MOTION

The PRESIDING OFFICER. Pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The bill clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the motion to proceed to Calendar No. 91, S. 1197, a bill to authorize appropriations for fiscal year 2014 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

Harry Reid, Carl Levin, Jack Reed, Angus S. King, Jr., Mark Begich, Richard Blumenthal, Benjamin L. Cardin, Tim Kaine, Christopher A. Coons, Tom Udall, Sheldon Whitehouse, Bill Nelson, Joe Manchin III, Mark R. Warner, Debbie Stabenow, Amy Klobuchar, Richard J. Durbin.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the motion to proceed to S. 1197, a bill to authorize appropriations for fiscal year 2014 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Alaska (Mr. BEGICH), the Senator from Louisiana (Ms. LANDRIEU), and the Senator from Virginia (Mr. WARNER) are necessarily absent.

Mr. CORNYN. The following Senators are necessarily absent: the Senator from Missouri (Mr. BLUNT), the Senator from Georgia (Mr. CHAMBLISS), the Senator from South Carolina (Mr. GRAHAM), the Senator from Georgia (Mr. ISAKSON), the Senator from Florida (Mr. RUBIO), and the Senator from Louisiana (Mr. VITTER).

The PRESIDING OFFICER (Mr. DONNELLY). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 91, nays 0, as follows:

[Rollcall Vote No. 236 Leg.]

YEAS—91

Alexander	Coons	Hirono
Ayotte	Corker	Hoeven
Baldwin	Cornyn	Inhofe
Barrasso	Crapo	Johanns
Baucus	Cruz	Johnson (SD)
Bennet	Donnelly	Johnson (WI)
Blumenthal	Durbin	Kaine
Booker	Enzi	King
Boozman	Feinstein	Kirk
Boxer	Fischer	Klobuchar
Brown	Flake	Leahy
Burr	Franken	Lee
Cantwell	Gillibrand	Levin
Cardin	Grassley	Manchin
Carper	Hagan	Markey
Casey	Harkin	McCain
Coats	Hatch	McCaskill
Coburn	Heinrich	McConnell
Cochran	Heitkamp	Menendez
Collins	Heller	Merkley